

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05cr46

THIS MATTER is before the Court upon motion of the defendant pro se for a reduction of sentence based on the retroactive amendments to the United States Sentencing Guidelines triggered by the Fair Sentencing Act of 2010. (Doc. No. 98).

The offense level for the defendant's case was determined pursuant to the career offender guideline. (Doc. No. 36: Statement of Reasons (SOR) at 1; Doc. No. 52: Sentencing Hearing TR at 26-27). The career offender guideline sets the offense level in relation to the maximum statutory penalty, USSG §4B1.1(b), and was not affected by the 2011 amendments, USSG Supp. to Appx. C., Amend. 759 (2011). See also Neal v. United States, 516 U.S. 284, 296 (1996) (retroactive amendment to guidelines does not alter statutory mandatory minimum).

Accordingly, the defendant is not eligible for a sentence reduction. USSG §1B1.10 comment. (n.1(A)(ii)) (defendant not eligible for reduction where another guideline provision prevents lowering of guideline range).

IT IS, THEREFORE, ORDERED that the defendant's motion is **DENIED**.

The Clerk is directed to certify copies of this Order to the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: November 23, 2011



Robert J. Conrad, Jr.
Chief United States District Judge

